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TOWNSEND and TOWNSEND and CREW LLP

By: Reeti Hale

PATENT
Docket No.: 015358-009440US
Client Ref. No.: ID-RII-326

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Berna Erol, et al.

Application No.: 10/696,735

Filed: October 28, 2003

For: TECHNIQUES FOR USING A
CAPTURED IMAGE FOR THE
RETRIEVAL OF RECORDED
INFORMATION

Customer No.: 20350

Confirmation No.: 6346

Examiner: Andrew W. Johns

Art Unit: 2614

REQUEST FOR
RECONSIDERATION OF
PATENT TERM
ADJUSTMENT
DETERMINATION UNDER
37 C.F.R. § 1.705 (b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705(b), Applicants respectfully request
reconsideration of the patent term adjustment determination. This request is
accompanied by the fee set forth in § 1.18 (e) and a statement of facts as required under
37 C.F.R. § 1.705 (b)(2). This request is prompted by the recent decision in *Wyeth, et al.*
v. Dudas (Case No. 07-1492, D.D.C. 2008) which held the periods of delay under 35
U.S.C. § 154(b)(1)(A) and U.S.C. § 154(b)(1)(B) overlap only if they occur on the same
calendar day or days.

Statement of Facts

Correct Patent Term Adjustment and the Bases Under § 1.702 for the adjustment.

The period of adjustment under § 1.702(a) is 1469 days, not 1377 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed on October 8, 2008.

The period of Adjustment under 37 C.F.R. § 1.702(a) is 669 days ("A delay").

The period of Adjustment under 37 C.F.R. § 1.702(b) is to be determined when the instant application issues. The current effective period of adjustment as of January 8, 2009 under 37 CFR § 1.702(b) is 803 days ("B delays"). Applicant submits that pursuant to 1.702(b), the total period of adjustment continues from this date, January 8, 2009, the date of the instant petition and concurrent submission of the issue fee payment. Applicant is entitled to additional adjustment days until the date of the patent issuance pursuant to 1.702(b).

The relevant dates as specified in 37 C.F.R. § 1.703 (a)-(e) and the adjustment specified in 1.703 (f).

1. § 1.703(a)

Applicants are in agreement with the U.S.P.T.O. determination of a period of adjustment of 1380 days under 37 C.F.R. § 1.703(a) provided the following circumstances:

The U.S.P.T.O. mailed a Notice of Allowance on October 8, 2008 (exceeding 14 months from the date the application was filed), causing the Patent Term to increase by 1380 days. (CFR 1.703(a)(1)).

However, there is an overlap of "Type A" and "Type B" delay, therefore, the "Type A" delay is decreased to 669 days of PTA.

2. § 1.703(b)

The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, October 28, 2006, and ends on the day the patent is issued.

3. § 1.703(c)-(e)

There are no relevant dates as specified under § 1.703(c) – (e).

5. § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.702(f) is 1472, i.e., 669 days of A delay, plus 803 days of B delay. Applicants are also entitled to any period of adjustment under 37 C.F.R. § 1.703(a)(6), until the date the patent issues.

Overlap of Type A and Type B delays

To the extent that periods of delay attributable to grounds specified in 35 U.S.C. § 154(b)(1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed, see 35 U.S.C. § 154(b)(2). The periods of delay under 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(B) overlap only if they occur on the same calendar day or days.

The calendar days for "Type A" and "Type B" delays do overlap with respect to this patent application.

Overlap

The overlap starts on October 28, 2006 and ends on October 8, 2008. "Type A" and "Type B" overlap by 711 days.

Reduction of period of adjustment of patent term under 37 CFR § 1.704

The applicants filed a Response on May 3, 2004 to the Notice of Missing Parts Mailed on January 30, 2004; thus, exceeding the three month time period to reply and causing a 3 day reduction of patent term adjustment.

Applicants acknowledge that the correct period of applicants delays are correctly reflected in PAIR.

Patent Term Adjustment Determination

According to the *Wyeth, et al. v. Dudas* decision, currently as of January 8, 2009, applicants are entitled to 1469 days of patent term adjustment, i.e., [1472 (A delay + B delay] minus [3 days (applicant delay)]. Applicants are also entitled to any period of adjustment under 37 C.F.R. § 1.703(a)(6), until the date the patent issues.

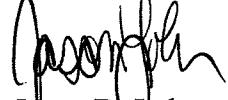
In accordance with 37 CFR § 1.705(b)(1), the Commissioner is authorized to deduct the fee set forth in 37 CFR § 1.18(e) (\$200) from the undersigned's Deposit Account No. 20-1430. Please deduct any additional fees from, or credit any overpayment to, the above-noted Deposit Account.

Terminal Disclaimer

Assignees of the instant application note that no terminal disclaimer has been filed in the above-referenced application at this point.

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Respectfully submitted,



Jason D. Lohr
Reg. No. 48,163

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300
JDL:jmk
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